



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Washington, D.C. 20226

Number: 83-6

Date: March 2, 1983

USE OF DISSIMILAR GOODS AS "FREE GOODS"

Proprietors of Distilled Spirits Plants, Bonded Wine Cellars, Taxpaid Wine Bottling Houses, Brewers, Wholesale Liquor Dealers, Importers and others concerned:

PURPOSE: The purpose of this circular is to inform you of a forthcoming ATF Ruling concerning the use of dissimilar alcoholic beverages as a discount on the price of alcoholic beverages purchased. This ruling will revoke ATF Ruling 75-33 and will read as follows:

The Bureau of Alcohol, Tobacco and Firearms has reviewed its position, as stated in ATF Ruling 75-33, 1975 ATF C.B. 34, that "free goods" must be identical, with the exception of container size, to other goods purchased in order to be considered as part of a pricing arrangement outside the purview of the Federal Alcohol Administration Act, 27 U.S.C. 201 et seq. As a result of that review, ATF Ruling 75-33 is revoked, and the use of dissimilar alcoholic beverages as a discount on the purchase of alcoholic beverages can be considered as part of a legitimate pricing arrangement.

In general, 27 U.S.C. 205(b)(3) states that it is unlawful for any producer, bottler, importer or wholesaler of alcoholic beverages, indirectly or through an affiliate, to induce any retailer to purchase alcoholic beverages from such person to the exclusion, in whole or in part, of any such products sold, or offered for sale by other persons in interstate or foreign commerce by furnishing, giving, renting, lending or selling to the retailer any fixtures, signs, supplies, money, services or other things of value.

It was held in Revenue Ruling 54-161, 1954-1 C.B. 338, that so-called free goods, discounts, rebates, refunds, and price reductions given to retailers pursuant to an agreement made at the time of sale are merely methods used to arrive at an agreed sales price and are not considered "gifts" within the meaning of

the Federal Alcohol Administration Act. However, if the amount of the free goods, discounts, rebates, or similar price reductions is such that the pricing aspect is merely a subterfuge, the transaction would constitute a gift within the meaning of 27 U.S.C. 205(b)(3).

ATF Ruling 75-33 later attempted to guide industry members in distinguishing between legitimate price reductions and so called prohibited "gifts" by defining what kinds of free goods were permissible. The ruling held that free goods furnished to a retailer by an industry member had to be identical, with the exception of container size, to the alcoholic beverages purchased in order to be considered as part of a legitimate pricing arrangement.

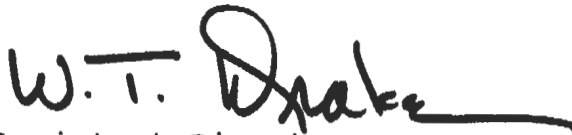
Further consideration of the issue, however, indicates that the use of free goods should not be limited only to the same kind as purchased. The purpose of the FAA Act is to promote fair and legal competition. Since it has been the Bureau's position to recognize free goods as a form of discount, it is more important to consider the amount of the value of the discount given, rather than the nature of the furnished product. The use of even totally dissimilar goods does fulfill the basic premise that the arrangement can be translated into an agreement to purchase the combined amount of both free and purchased goods at a reduced price.

Held, the use of free dissimilar alcoholic beverages as a discount on the purchase of alcoholic beverages can be considered as part of a pricing arrangement provided it is based on an agreement made at the time of sale, it is reflected on the related sales invoice or some other document readily available for examination, and it is not a subterfuge for violating any of the trade practices prohibited by 27 U.S.C. 205 (a) through (d).

ATF Ruling 75-33, 1975 ATF C.B. 34, is revoked.

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Inquiries concerning this circular should refer to its number and be addressed to the Assistant Director, Regulatory Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20226

A handwritten signature in black ink, appearing to read "W. T. Drake", with a long horizontal flourish extending to the right.

Assistant Director
(Regulatory Enforcement)